

Special Civil Application No 6157 of 1988

Date of decision: 05/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

BHAGAVANDAS MOTIRAM PATEL vs STATE OF GUJARAT & ANR.

Appearance: Shri P.J. Vyas, Advocates, for the Petitioner
Shri D.N. Patel, Asst. Govt. Pleader, for the
Respondents

Coram : MR.JUSTICE A.N.DIVECHA

ORAL JUDGEMENT

The order passed by and on behalf of the State of Gujarat (respondent No.1 herein) on 27th July 1988 under sec. 34 of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) is under challenge in this petition under art. 226 of the Constitution of India. By the impugned order, the petitioner's holding was declared surplus to the tune of 8083 square meters after setting aside the order passed by the Competent Authority at Surat (respondent No.2 herein) on 30th July 1985 holding that the petitioner had no excess land within the urban agglomeration of Surat.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filled in the declaration in the prescribed form under sec. 6(1) of the Act with respect to the holding in his name within the urban agglomeration of Surat. It appears that he filled in such declaration in his capacity as

the karta of his joint Hindu family. That form was duly processed by respondent No. 2. After observing all necessary formalities according to law, by his order passed on 30th July 1985 under sec. 8(4) of the Act, respondent No.1 came to the conclusion that the petitioner's holding was on behalf of the family and it had 8 major sharers and the holding of the petitioner being to the tune of 9563 square meters was not in excess of the ceiling limit. Its copy is at Annexure A to this petition. It appears that the order at Annexure A to this petition came to the notice of the concerned officer of respondent No. 1. He appears to have found it not according to law. Its suo motu revision under sec. 34 of the Act was contemplated. Thereupon a show-cause notice came to be issued calling upon the petitioner to show cause why the order at Annexure A to this petition should not be revised under sec. 34 of the Act. A copy of the aforesaid show-cause notice is at Annexure C to this petition. The petitioner filed his reply thereto on 1st December 1987. Its copy is at Annexure D to this petition. After hearing the petitioner, by the order passed on 27th July 1988, respondent No. 1 came to the conclusion that the petitioner's holding was in excess of the ceiling limit by 8083 square meters and it was required to be declared surplus. Its copy is at Annexure E to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure E to this petition.

3. It transpires from the impugned order at Annexure A to this petition that one parcel of land bearing survey No. 244 admeasuring 9384 square meters was used for agricultural purposes on the date of coming into force of the Act. It however does not become clear whether or not a master plan answering its definition contained in sec.2(h) of the Act was in existence at the relevant time and, if it was in existence, whether the aforesaid agricultural land was shown in any zone other than the agricultural zone therein. This aspect of the matter appears to have been lost sight of by respondent No.1 herein as the agricultural land, if any, situated in any zone other than the agricultural zone in the master plan, if any, in existence at the relevant time, will have to be excluded from the holding of the land-holder in view of the binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum v. State of U.P. and others reported in AIR 1993 Supreme Court 2465.

4. It transpires from the order at Annexure A to this petition that two properties were constructed properties for residential use. They have to be excluded from the holding of the petitioner in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal

and others reported in AIR 1992 Supreme Court 1567.

5. It appears that the attention of the author of the order at Annexure E to this petition was not focussed on these two aspects of the case. The impugned order at Annexure E to this petition will have therefore to be quashed and set aside. It would however not be desirable to restore the order at Annexure A to this petition as there is no material on record to show the situation of the agricultural land in the master plan, if any, answering its definition contained in sec. 2(h) of the Act. The matter will have therefore to be remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. It would be open to the petitioner to establish before respondent No.1 that the family was joint for all practical purposes though the land was inherited by him from his paternal aunt under a testamentary document.

6. In the result, this petition is accepted to the aforesaid extent. The order passed by and on behalf of respondent No.1 on 27th July 1988 at Annexure E to this petition is quashed and set aside. The matter is remanded to the Competent Authority at Surat for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
